

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IPCOM, GMBH & CO. KG

Plaintiff,

v.

AT&T INC., ET AL.

Defendant,

NOKIA OF AMERICA CORPORATION,

Intervenor,

ERICSSON INC.,

Intervenor,

Case No.: 2:20-cv-00322
LEAD CASE
JURY DEMANDED

VERIZON COMMUNICATIONS, ET AL.

Defendant,

NOKIA OF AMERICA CORPORATION,

Intervenor,

ERICSSON INC.,

Intervenor.

Case No.: 2:20-cv-00323-JRG
JURY DEMANDED

STIPULATION OF PARTIAL SUMMARY JUDGMENT ON CERTAIN CLAIMS

The above-captioned parties to this action, through their attorneys, hereby stipulate and agree, subject to the approval of the Court as follows:

1. This is a patent infringement action, in which Plaintiff ICom, GmbH & Co. KG has alleged, *inter alia*, that Defendants AT&T Corp., AT&T Communications LLC, AT&T Mobility LLC, AT&T Mobility II LLC, AT&T Services Inc. (“AT&T” or “Defendants”) have infringed claim 1 of U.S. Patent No. 7,778,310 (the “’310 Patent”).

2. On January 6, 2021, ICom served Defendants with infringement contentions for, *inter alia*, claim 1 of the ’310 Patent. ECF No. 29. ICom’s infringement contentions alleged that AT&T had directly infringed claim 1 under 35 U.S.C. § 271(a) by using, installing, testing, and/or maintaining NodeBs and related software and equipment in AT&T’s cellular network, including at least 3G Compatible NodeBs supplied by Ericsson and Nokia.

3. On September 15, 2021, the Court entered its Claim Construction Memorandum Opinion and Order (“Claim Construction Order”), ECF No. 15.

4. With respect to claim 1 of the ’310 Patent, the Court construed the phrase “perch channel[s]” to mean “control channel[s] for notifying reverse link interference power measured at the base station, system frame number, and the like.” Claim Construction Order at 35. In its analysis, the Court stated:

There are two issues in dispute. First, whether a perch channel is necessarily for notifying reverse link interference power measured at the base station and system frame number. It is. Second, whether each claim-recited “perch channel” is a singular rather than a group of one or more channels. Each is a singular physical channel.

Id. at 34.

5. Further, with respect to the same claim, the Court construed the term “common short code” to mean “a short period spreading code defined uniquely to the mobile communication system.” *Id.* at 39.

6. IPCom does not agree with the Court’s constructions of the terms “perch channel[s]” and “common short code.” IPCom argued for different constructions for these terms as briefed in IPCom’s Opening Claim Construction Brief (ECF No. 89) and IPCom’s Reply Claim Construction Brief (ECF No. 101).

7. Based on the Court’s foregoing constructions, the accused NodeBs and related software and equipment in AT&T’s cellular network do not infringe claim 1 of the ’310 Patent.

8. Therefore, the parties agree to the entry of partial summary judgment of non-infringement for claim 1 of the ’310 Patent, with the understanding the parties expressly reserve the right to appeal any issues pertaining to the Court’s foregoing claim constructions and/or the Partial Summary Judgement of Noninfringement with respect to the ’310 Patent.

9. Therefore, Defendants agree to dismiss all of their pending counterclaims and defenses with respect to claim 1 of the ’310 Patent without prejudice and without waiving any Defendants’ right to assert or reassert any or all such claims or defenses in this action or another, including but not limited to the appellate court remanding the case for further proceedings. Defendants have non-infringement and invalidity claims or defenses with respect to claim 1 of the ’310 patent in addition to those addressed in this Stipulation, and expressly reserve the right to assert those claims or defenses in this action or another, including but not limited to the appellate court remanding the case for further proceedings.

DATED: October 7, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel of record who have consented to electronic service as this district requires in accordance with Local Rule CV-5(a)(3)(A) on this 7th day of October, 2021.

/s/ Jeffrey B. Plies
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